

DECLARATION ON THE RIGHTS OF EXPELLED AND DEPORTED PERSONS

PREAMBLE

WHEREAS all persons, including expelled and deported persons, are entitled to respect for their dignity, due process of law, equal treatment, freedom from discrimination, freedom from arbitrary and disproportionately harsh practices, and the protection of their human rights and fundamental freedoms under the Charter of the United Nations, Universal Declaration of Human Rights, various generally accepted regional and international human rights instruments, international humanitarian law, and *jus cogens* norms,

RECALLING the obligation of all States, in conformity with the Charter of the United Nations and the human rights instruments to which they are party, to respect, protect and promote human rights and fundamental freedoms of all persons,

DECLARING and RECOGNIZING that expelled and deported persons are a legally-cognizable class entitled to special protection to ensure their human rights and fundamental freedoms,

RECOGNIZING that these rights derive from the inherent dignity of the human person, not citizenship or immigration status, and that they therefore justify international protection to reinforce and complement such protections as may be provided by the law of States and regional bodies,

ACKNOWLEDGING the legitimate concerns of States and supranational entities and the widely recognized legal fact of sovereignty as bases for regulating the movement of people across borders in conformity with law and human rights,

CONCERNED, however, about many of the current practices of border and migration controls, and the harmful consequences of massive, inhumane and harsh expulsions and deportations for individuals, their families and communities,

RECOGNIZING that expulsion and deportation should be measures of last resort and, if they are ever deemed to be necessary, should be undertaken by the most humane and least restrictive means possible, without the use of force or detention, unless absolutely necessary,

RECOGNIZING that the rights of noncitizens, including those facing expulsion or deportation, have been widely recognized in such instruments as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the Rights of All Migrant Workers and Members of Their Families, and the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live,

DETERMINED now to affirm respect for human dignity and human rights, and due process of law into the practices of expulsion and deportation, and especially into the reception, adjustment and reintegration of expelled and deported persons,

Proclaims this Declaration:

PART 1: DEFINITIONS AND SCOPE

Article 1.

For the purposes of the present Convention:

- (1) The terms “expelled person” and “deported person” refer to a non-citizen of the sending State who has been returned, removed or expelled to her/his country of citizenship or a third country as a result of the sending State’s order/action compelling or inducing the individual to leave. The terms imply forcible state action but also include so-called voluntary mechanisms. The term “deported person” may under highly unusual circumstances include, but is not limited to the type of deportation that is defined as a war crime and a crime against humanity in the 1945 Charter of the International Military Tribunal at Nuremberg, the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War, Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, Article 7(1) of the Rome Statute of the International Criminal Court, and related instruments.
- (2) The term “sending State” refers to a State or supranational entity that has induced or compelled the return, removal, expulsion or deportation of a non-citizen.
- (3) The term “receiving State” refers to a State or supranational entity to which the expelled or deported person is sent whether or not it is the person’s country of citizenship.

Article 2.

The present Declaration pertains to the rights of expelled and deported persons from the moment they are compelled or induced to depart from the sending State; it aims to supplement the rights such persons have before and during expulsion or deportation processes prior to departure as recognized by national laws and international instruments cited in the Preamble and related instruments.

PART 2: ARTICLES OF GENERAL APPLICATION

Article 3.

The present Declaration is applicable to all expelled and deported persons - whether in the sending State, receiving State or in transit - without distinction of any kind such as sex, race, color, language, religion or conviction, political or other opinion, national, ethnic or social origin, age, sexual orientation, gender identity, disability, economic position, property ownership, or marital status.

Article 4.

- (1) States and regional and international bodies should undertake all appropriate legislative, administrative, juridical and other measures for the implementation of the rights recognized in the present Declaration.
- (2) Both sending and receiving States have the independent duty and responsibility to ensure the rights set forth in the present Declaration, including during the time after an individual has departed from the sending State. Wherever necessary, sending and receiving States should collaborate closely to ensure protection of the rights set forth in the present Declaration.
- (3) Individuals should never be expelled or deported to States, territories, or failed States in which governments cannot protect their basic rights as defined herein or to a place in which the person will not be received permanently.
- (4) With regard to economic, social and cultural rights in this Declaration, States should undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation, especially through collaboration and coordination between the sending and receiving States.

Article 5.

- (1) All expelled and deported persons, whether in the sending State, receiving State or in transit, have the right to life, respect for dignity, security of person and property, and protection from arbitrary detention.
- (2) No one shall be subjected to torture or cruel inhuman or degrading treatment or punishment.

Article 6.

All expelled or deported persons have the right to recognition everywhere as a person before the law.

Article 7.

- (1) Expelled and deported persons should not be discriminated against in receiving States on the grounds that they have been expelled or deported.
- (2) Expelled and deported persons should not be discriminated against in receiving States on the basis of criminal history, except that they may be subjected to generally applicable laws in the same way as citizens or legal residents of those receiving States.
- (3) Expelled and deported persons who are citizens or nationals of the receiving State should enjoy the same rights and privileges as other citizens or nationals in the receiving State.

- (4) Expelled and deported persons who are non-citizens of the receiving state shall enjoy the same rights and privileges as other individuals who are legally present in the receiving State.
- (5) Sending States should not expel or deport persons to receiving States in which they do not have a right of legal permanent residence. Exceptions may be made under circumstances where the individual has requested such expulsion or deportation and the sending State has determined that the person would not be subject to persecution, torture, re-expulsion and similar practices.

Article 8.

- (1) States should neither expel nor deport particularly vulnerable persons. Nor should expulsion or deportation be carried out when it would be disproportionate, unfair or otherwise in violation of fundamental human rights. Legal process must be fully available to ensure compliance with these evolving norms.
- (2) If sending States deem it legal and necessary to deport such persons, certain expelled and deported persons who require special attention, such as children, especially unaccompanied minors, pregnant and nursing women, persons with physical or mental disabilities, persons whose claims for asylum, withholding of removal, non-refoulement and similar forms of protection were denied, victims of human trafficking and other serious crimes, persons living with HIV/AIDS or other serious medical conditions, are entitled to protection and assistance required by their condition and to treatment which takes into account their special needs. Both sending and receiving States should coordinate protection, care, and treatment of such persons.

Article 9.

The present Declaration shall not be interpreted as restricting or impairing the provisions of any international human rights instrument, Court or Committee decisions or rights granted to persons under domestic or international law.

PART 3: ARTICLES RELATING TO TRAVEL AND RECEPTION

Article 10.

- (1) All expelled and deported persons should be treated with respect and dignity during all stages of travel to and upon arrival at the receiving State, and should not be subject to torture, arbitrary detention, unreasonable physical or chemical restraint or other forms of cruel, inhuman or degrading treatment or punishment.
- (2) Restraints may only be imposed to ensure the physical safety of the individual or others around her/him, when less restrictive interventions have proven unsuccessful. When a restraint is deemed necessary, it should be done in the least restrictive method possible.

Article 11.

- (1) All expelled and deported persons should have access to food, water, sanitation, basic healthcare, shelter and other basic needs during all stages of travel to and upon arrival at the receiving State.
- (2) Sending and receiving States shall coordinate to meet such basic needs. States through which a person may be compelled to travel also bear responsibility for that person.

Article 12.

- (1) Expelled and deported persons who require special attention, including children, especially unaccompanied minors, pregnant and nursing women, persons with physical or mental disabilities, persons whose claims for asylum, withholding of removal, non-refoulement and similar forms of protection were denied, victims of human trafficking and other serious crimes, persons living with HIV/AIDS or other serious medical conditions, should be entitled to protection and assistance required by their condition and treatment which takes into account their special needs during travel and upon arrival.
- (2) Sending and receiving States should coordinate to provide adequate services to such individuals, or establish procedures to connect them to existing services. Such procedures may include information sharing, such as the transfer of medical records upon the informed consent of the individual.
- (3) Sending States should be especially mindful when coordinating the departure and travel of individuals who have made claims under specially protected grounds of international law.

Article 13.

- (1) Expelled and deported persons, if they choose, should be permitted to notify family members or others in the receiving State of their expected arrival.
- (2) Sending and receiving States should coordinate resources to assist individuals with opportunities to contact their family members or others.

Article 14.

- (1) All expelled and deported persons should be able to bring their assets and personal effects to the receiving State, and should have continuing access to such assets and effects in the sending State, including funds, anticipated legal settlements, pensions, social security and other government benefits.
- (2) Sending States should assist expelled and deported persons in making arrangements to liquidate or transfer their assets before departure.
- (3) Sending and receiving States should coordinate to assist expelled and deported persons with accessing their assets in the sending State after departure.

PART 4: ARTICLES RELATING TO ADJUSTMENT AND REINTEGRATION

Article 15.

Expelled and deported persons should have the same rights to participate in public affairs and have the same access to public services as those with comparable citizenship or legal status in the receiving State.

Article 16.

- (1) All expelled and deported persons should be issued identification documents that enable them to enjoy their rights and privileges in the receiving State.
- (2) Expelled and deported persons should be issued the same identification documents as those with comparable citizenship or legal status in the receiving State.
- (3) The receiving State should make obtaining such documents accessible and affordable.
- (4) At no time after departure should the sending State retain the personal identification documents of a person being expelled or deported.
- (5) Family members accompanying or following to join expelled or deported persons should also be issued identification documents that enable them to enjoy applicable legal rights and privileges in the receiving State.

Article 17.

- (1) All expelled and deported persons have the right to be free from social stigma and the discrimination and violence that may arise from social stigma.
- (2) The receiving State should protect all expelled and deported persons against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

Article 18.

- (1) All expelled and deported persons have the right to housing comparable to that of legal residents in the receiving State.
- (2) Sending and receiving States should collaborate to make appropriate housing arrangements for expelled and deported persons, especially for individuals who require special attention as identified in Article 8(2).

Article 19.

All expelled and deported persons have the right to the highest attainable standard of health care.

- (2) Sending and receiving States should coordinate to ensure continuity of medication and medical treatment upon arrival, such as transferring medical records upon the informed consent of the individual, and providing appropriate referrals.
- (3) Whenever possible, sending and receiving States should coordinate to make special care available for individuals who have special needs.

Article 20.

- (1) All expelled and deported persons have the rights to work, to free choice of employment, to just and favorable conditions of work, to fair compensation and to protection against unemployment.

- (2) The receiving State should ensure fair hiring practices for all expelled and deported persons without negative discrimination.
- (3) Sending and receiving States should coordinate to provide services that ensure these rights, including skills training, language courses, job placement, and small business loans.

**PART 5: ARTICLES RELATING TO CONTINUED ACCESS
TO LEGAL PROCEEDINGS**

Article 21.

- (1) All expelled and deported persons have the right to participate in legal proceedings, in sending States, including criminal, civil and family court proceedings after they have been expelled or deported.
- (2) Sending and receiving States should facilitate travel and entry to the sending State for the purpose of participating in legal proceedings.

Article 22.

- (1) All expelled and deported persons have the right to appeal or challenge wrongful expulsions.
- (2) The sending State should provide a simple, accessible system for appealing or challenging an order of expulsion or deportation from outside its territorial borders, including a system of collateral motions where reasonable grounds for reopening or reconsideration of removal orders are taken into consideration. The following non-exhaustive list shall provide sufficient grounds for reconsideration of a final order, even where all appeals have been exhausted: a) major change in law; b) discovery of a material mistake of law or fact; c) lack of notice of the expulsion or deportation hearing; e) material and substantial changed circumstance.
- (3) The sending State should be especially mindful when considering appeals and collateral challenges of cases based on claims for asylum, withholding of removal, non-refoulement and similar forms of protection.
- (4) All expelled and deported persons have the right to physically return to the sending State without undue costs, restrictions, or restraints if they prevail on an appeal or collateral challenge to a removal order.

Article 23.

Expelled and deported persons have the right to seek to return lawfully to the sending State, whether permanently or temporarily, through existing channels. Where the expulsion or deportation was accompanied by a reentry ban, such a ban should be limited in length and a waiver of the ban should be made available for humanitarian reasons, for purposes of family reunification, or when otherwise in the public interest.

**PART 6: ARTICLES RELATING TO RESPECT OF FAMILY
LIFE AND FAMILY UNITY**

Article 24.

- (1) All expelled and deported persons have the right to respect of family life, as recognized under international human rights law.
- (2) In cases where expulsion or deportation has led to separation of family members, sending and receiving States should provide avenues for family reunification, and generously grant requests for visits through special visas or parole, especially for humanitarian purposes.

Article 25.

- (1) In determining the custody of children of expelled or deported persons the best interests of the child shall be of paramount consideration. The fact that a parent has been expelled or deported should not be a reason for the termination of custody, parental rights or visitation rights.
- (2) Sending and receiving States should facilitate travel and entry to the sending State for the purpose of participating in child custody hearings.

PART 7: ACCOUNTABILITY

Article 26.

All expelled and deported persons whose human rights as set forth in this Declaration are violated are entitled to have those directly or indirectly responsible for the violation, whether officials of a State or supranational entity or not, held accountable for their actions in a manner that is proportionate to the seriousness of the violation.